IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

OP.No. 37020 of 2002(F)

PETITIONER:

R. SAHADEVAN, S/O. RAMAN,
ASARIVILAKOM, THOTTAKKAD,
PARAVARAM P.O., KALLMBALAM.

BY ADV. SRI.R.RENJITH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY, LOCAL ADMINISTRATION,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM.

4. OTTOOR GRAMA PANCHAYAT,
REPRESENTED BY SPECIAL GRADE SECRETARY,
OTTOOR GRAMA PANCHAYAT,
THIRUVANANTHAPURAM DISTRICT.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 62620/2002 IN OP NO. 37020/2002 F.

DISMISSED

22/01/2007. SD/- K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE ORDER NO. R.DIS. 107/66 DT. 09/08/67 BY THE EXE. OFFICER, MANAPOOR PANCHAYAT, MANAPOOR.

EXT.P2. COPY OF THE LETTER NO. A3/ 9488/92/L.DIS DT. 29/12/92 BY THE DIST. PANCHAYAT OFFICER, TVM TO THE EXE. OFFICER, KARAVARAM PANCHAYATH.

EXT.P3. COPY OF THE ORDER NO. E3. 8066/98 DT. 2/06/98 BY THE ASST. DIRECTOR OF PANCHAYAT TRIVANDRUM.

EXT.P4. COPY OF THE ORDER NO. A1/109/96 DT. 5/12/2002 BY R4.

[True Copy]

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K.BALAKRISHNAN NAIR, J.

O.P.NO.37020 of 2002-F

Dated this the 22nd day of January, 2007

JUDGMENT

The petitioner was a Peon working in the 4th respondent Panchayat. He joined service as part-time contingent sweeper on 20-4-1967. Later, he was posted as full-time sweeper with effect from 9-8-1967. Still later he was promoted as Peon on 24-9-1977. The petitioner claims retention in service on the ground that he joined service before 7-4-1970. The said claim has been rejected by Ext.P4 on the ground that he was promoted as Peon after 7-4-1970. But, the petitioner relies on Ext.P2 communication of the District Panchayat Officer. His claim for 25 years of higher grade service has been rejected by that communication dated 29-12-1992 stating that he is eligible to continue as Last Grade Servant till he attains 60 years and therefore higher grade cannot be granted. He prays for quashing Ext.P4 and consequently to retain him in service till he attains the age of 60 years. He complains that Ext.P4 has been issued without hearing him.

2. The third respondent has filed a counter affidavit. In the

counter affidavit the stand taken in Ext.P4 has been reiterated. The petitioner was promoted as Peon only on 24-9-1977. Since the petitioner was a Last Grade Servant on 7-4-1970, he is not entitled to be retained in service beyond 55 years, it is submitted.

3. Heard. The learned counsel for the petitioner submits that in view of Ext.P2 respondents are estopped from taking a different stand. The petitioner's claim for retention in service can be considered in the light of the provision in Rule 60(b) of Chapter VIII of K.S.R. which reads as follows:

> ***60(b)**. Officers in the Last Grade Service on 7th April 1970 will retire on the afternoon of the last day of the month in which they attain the age of 60 years provided that this benefit will be available to them only as long as they continue to be in the Last Grade Service as defined in Rule 12 (16-A).*

The said Rule has been interpreted by this Court in several decisions. It has been consistently held that for claiming the benefit of that Rule, the employees should be in service on 7-4-1970. But, the Government has issued certain executive orders diluting the rigour of that order. But, no order has been brought to my notice which will apply to the petitioner who was a part-time contingent employee in the Panchayat on 7-4-1970.

In the result, the Original Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No.37020 of 2002

J U D G M E N T

DATED 22nd JANUARY,2007